

VZCZCXRO3408  
RR RUEH DU RUEHJO  
DE RUEHSA #0616/01 0521413  
ZNR UUUUU ZZH  
R 211413Z FEB 07  
FM AMEMBASSY PRETORIA  
TO RUEHC/SECSTATE WASHDC 8279  
INFO RUEHJO/AMCONSUL JOHANNESBURG 6207  
RUEHTN/AMCONSUL CAPE TOWN 3970  
RUEH DU/AMCONSUL DURBAN 8590  
RUEATRS/DEPT OF TREASURY WASHDC  
RUCPDC/DEPT OF COMMERCE WASHDC

UNCLAS SECTION 01 OF 03 PRETORIA 000616

SIPDIS

SENSITIVE BUT UNCLASSIFIED  
SIPDIS

DEPARTMENT PASS USTR FOR J. CHLOE GROVES  
COMMERCE FOR ITA/MAC/OIPR FOR C. PETERS  
EB/TPP/IPE FOR J. BOGER

E.O. 12958: N/A  
TAGS: [ECON](#) [ETRD](#) [KIPR](#) [SF](#)  
SUBJECT: SOUTH AFRICA INPUT FOR 301 REVIEW

REF: A. STATE 07944  
[B](#). 05 PRETORIA 03051

[1](#)1. (SBU) Summary. In response to Ref A, Post recommends that South Africa not be placed on the Special 301 Watch List for 2007. Optical media piracy and counterfeit goods do pose a problem for the South African Government (SAG), but the SAG has made continuous efforts to combat this issue. The SAG's creation of commercial crime courts that are able to focus on intellectual property rights (IPR), dedication of specialized prosecutors who deal solely with IPR crimes, and formation of the Department of Trade and Industry's (DTI) IPR investigative unit speaks to the SAG's interest in reducing IPR violations. The SAG is receptive to both private sector and USG training and skills workshops to improve its enforcement efforts. End Summary.

-----  
LEGISLATION AND LEGAL ACTION  
-----

[1](#)2. (SBU) South Africa's current IPR legislation is TRIPS compliant. The Counterfeit Goods Act (CGA) and Copyright Act empower the South African Police (SAPS) and the DTI's IPR unit to investigate and pursue criminal convictions against IPR violators. A recent court case in a Pretoria court limited the reach of the CGA by requiring warrants to include specifics about suspects that are often unknown if the suspected IPR violator is an ex-pat or illegal alien. While this has momentarily stalled some IPR investigations, the South Africa Federation Against Copyright Theft (SAFACT) appealed this case, which is considered by those involved to be an anomaly. The outcome of the appeal is expected in the first quarter of 2007. (Note: Post will provide an update septel once the court's ruling has been issued.)

-----  
ACTION AGAINST IN-HOUSE PRODUCTION  
-----

[1](#)3. (SBU) In the past, South Africa mainly received pirated copyright products via Malaysia and Pakistan. However, recent raids have revealed several small distribution centers with approximately 40 burners in place. It is believed that Malaysia is still the point of origin for the original copy, usually a poor quality videocam taken at a movie theater. Although South Africa is still not considered a major point of production, SAFACT, in cooperation with SAPS, is focusing on increased raids for these distribution centers. Customs continues to enhance its border inspections to halt import of

pirated copyright material, as well as counterfeit goods.

-----  
ENFORCEMENT EFFORTS ON THE RISE  
-----

¶4. (SBU) The SAG's enforcement efforts to date suffer from key problems including poor investigative skills and preparation of cases by SAPS, thereby making many cases unusable by prosecutors, a lack of expertise among the prosecutors, and a complacent attitude by magistrates towards IPR violations, resulting in an under-appreciation of the crime and reluctance to impose deterrent penalties. In acknowledgment of these problems, the SAG is receptive to training and capacity building as top priorities, and continues to make improvements to its internal structures. According to local industry representatives, these efforts have improved IPR enforcement in South Africa.

¶5. (SBU) Enhancements at the magistrate level include creation of a commercial crime court, so that IPR crimes do not need to compete against the numerous violent crimes for magistrate attention, and the magistrate's ability to retain an IPR expert during trial to advise the magistrate on technical issues. To improve prosecutor expertise, the SAG has dedicated two specialized prosecutors to IPR crimes only. DTI has established an education section in its IPR division, which is tasked with training DTI investigators, SAPS, and the National Prosecuting Authority (NPA) regarding proper investigative techniques and docket preparation. This has also resulted in more cross-agency communication on IPR enforcement efforts.

¶6. (SBU) Awareness of the seriousness of IPR crimes has also

PRETORIA 00000616 002 OF 003

led to higher deterrent penalties . A recent court case against a counterfeiter of Unilever household goods received a five-year sentence, without the option to pay a fine. The lengthy sentence of the criminal, who is linked to organized crime, was hailed by IPR organizations as a step forward in IPR enforcement.

-----  
TRAINING PROGRAMS WELCOME  
-----

¶7. (SBU) As the SAG grapples with very real capacity problems associated with IPR enforcement, SAPS, NPA and DTI are open and receptive to USG, SAFACT, and other private organizations' offers to provide skill training. In 2005, with INL funding, post and the Intellectual Property Action Group (IPACT) organized workshops in seven provinces on IPR enforcement. The workshops raised awareness of the seriousness of IPR issues and more effective enforcement methods to some 244 prosecutors (Ref B). In 2007, post, again with INL funding, is cooperating with the U.S. Department of Justice to provide a two-day advanced workshop in the three major cities for DTI investigators, SAPS commercial crime investigators, and prosecutors. The course will provide advanced investigative techniques from the inception of a case through prosecution. DTI has expressed interest in further programming in 2007/2008 to include magistrate training opportunities.

¶8. (SBU) Customs also plays a key role in IPR enforcement in South Africa, as the majority of counterfeit product seizures are made by customs officials. Currently, there is little communication between SARS and SAPS, which can result in cases being dropped after the products are seized. However, publicity on the dangers of counterfeit products, especially medicines targeting the HIV/AIDS market, has placed more attention on the importance of Custom's role in IPR enforcement. Customs officials in the past year have begun to receive more awareness training by SARS, IPACT, SAFACT, and the American Chamber of Commerce.

-----  
AWARENESS CAMPAIGN  
-----

¶9. (SBU) One of the often cited problems with IPR enforcement is the public's opinion that IPR is a victimless crime. The Head of Customs, Leonard Radebe, has taken it upon himself to alter this public image. In honor of World Customs Day, Radebe appeared on local news stations and penned an article for the daily paper explaining IPR crimes, their seriousness and impact, and the importance of the public joining the fight against IPR crimes by detecting counterfeit goods and reporting them to SARS. Radebe listed all the SARS hotlines, as well as hotlines for the recording industry and SAFACT to promote public involvement in reporting IPR violations. DTI is also in the initial phases of a university program to incorporate IPR awareness into the college curriculum. DTI requested post's assistance with contacting U.S. professors or experts, who might be able to train local professors regarding the most modern IPR issues. Local artists, particularly musicians, have taken a high-profile stand on piracy, underscoring that South Africans suffer from the theft of intellectual property.

-----  
WIPO  
-----

¶10. (SBU) The SAG was engaged in studying the WIPO treaties, but has not taken any action towards signing them. At this point, the SAG's failure to be a party to the WIPO treaties has not caused a major impact on protecting IPR holders as Internet connections and capabilities in South Africa are limited and slow. However, this will likely turn into a larger problem with the planned infrastructure upgrades for the 2010 FIFA World Cup, which include installation of a submarine telecommunication line, thereby making DSL high speed capability more common. Pressure on SAG to move forward with signing the treaties is a recommended step for 2007-2008.

-----  
COMMENT

PRETORIA 00000616 003 OF 003

-----  
¶11. (SBU) South Africa's focus on and effort in halting IPR violations is commendable given the current crime situation in South Africa, with heavy media and public attention on the high rates of violent crimes. South Africa is cooperative with private sector IPR organizations in its efforts to improve its enforcement regime, continues to update its legal system to include courts, prosecutors, and commercial crime investigators that are more focused on IPR violations, and is initiating awareness campaigns to influence public opinion about IPR crimes. Given these efforts and South Africa's interest in further cooperation with the USG on IPR issues, post recommends that South Africa remain off the 301 Watch List.  
BOST